

Message Text

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TO SECSTATE WASHDC 3642

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

C O N F I D E N T I A L NEW DELHI 11683

E. O. 11652: GDS

TAGS: CGEN, IN, US

SUBJECT: CONSULAR CONVENTION

REF: STATE 192315

1. AS WAS DESCRIBED IN KREISBERG/KUX OFFICIAL-INFORMAL, DECEMBER 20, 1973, INDIAN POSITION AT THAT TIME WAS THAT GOI INTENDED TO SIGN THE VIENNA CONVENTION WITHIN THE YEAR, HAD ONLY ONE BILATERAL CONSULAR AGREEMENT (THAT WITH THE SOVIET UNION, WHICH HAD BEEN INITIATED AT SOVIET INSTANCE AND BECAUSE THE SOVIETS DID NOT INTEND TO ADHERE TO THE VIENNA CONVENTION), AND DID NOT SEE THE NEED FOR AN INDO-US BILATERAL UNDER THE CIRCUMSTANCES. THE DEPT INFORMED US IT AGREED WITH THIS POSITION.

2. AS WE UNDERSTAND IT, MAIN DEPARTMENT CONCERN NOW IS OVER CONSULAR ACCESS PROBLEM WHICH HAS ARISEN IN CONNECTION WITH HARCOS/FLETCHER CASE. THIS WAS A PROBLEM ONLY FOR PERIOD MAY 3-JUNE 19, 1974 AND WHEN IT AROSE, OFFICIALS OF GOI PROMPTLY ACCEPTED USG POSITION THAT VISITATION RIGHT SHOULD BE REESTABLISHED AS QUICKLY AS POSSIBLE. DELAY WAS APPARENTLY CAUSED BY LOCAL POLICE/JURIDICAL CONSIDERATIONS.

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3. FURTHER PROBLEM IN HARCOS/FLETCHER CASE OF CONSULAR

PRESENCE DURING TRIAL WOULD NOT, WE BELIEVE, BE CHANGED BY ANY PROSPECTIVE CONSULAR AGREEMENT. EMBASSY NOTES THAT NEITHER VIENNA CONVENTION OR ANY OF US BILATERALS WITH EASTERN EUROPEAN STATES NOR INDO-SOVIET BILATERAL INCLUDES ANY PROVISION REQUIRING RECEIVING STATE TO ALLOW CONSULAR ATTENDANCE AT A TRIAL, BUT ONLY DURING DETENTION, ARREST, OR IMPRISONMENT. WE COULD ATTEMPT TO INCLUDE SUCH A REFERENCE IN A BILATERAL AGREEMENT BUT STRONGLY DOUBT THE GOI WOULD AGREE, EXCEPT WITH CAVEATS THAT SUCH ATTENDANCE BE IN ACCORDANCE WITH INDIAN LAWS--WHICH WOULD BRING US AGAIN RIGHT UP AGAINST OFFICIAL SECRETS ACT AND SIMILAR LEGISLATIONS.

4. IN ORDER TO EXPLAIN USG RENEWED INTEREST IN CONSULAR CONVENTION AFTER HAVING PREVIOUSLY AGREED WITH GOI THERE WAS NO NEED FOR BILATERAL IF INDIANS SIGNED VIENNA CONVENTION, WE BELIEVE WE SHOULD BE VERY EXPLICIT ON WHAT ELABORATIONS OR CLARIFICATIONS SUCH A BILATERAL WOULD INCLUDE WHICH ARE NOT IN THE VIENNA CONVENTION. WE BELIEVE GOI WILL BE LOATH TO NEGOTIATE FULL BILATERAL ONLY IN ORDER TO CLARIFY TIME PERIOD WITHIN WHICH CONSULAR VISITATION MAY TAKE PLACE AND STIPULATION OF MINIMUM FREQUENCY OF SUCH VISITS. ARE THERE SUFFICIENT ADDITIONAL POINTS WE CAN MAKE TO GOI TO JUSTIFY OUR REQUEST?

5. IF WE NEGOTIATE A CONVENTION, THE CLOSER WE CAN GET TO THE LANGUAGE OF THE INDO-SOVIET CONVENTION, THE EASIER AND FASTER IT WILL PROBABLY BE TO COMPLETE NEGOTIATIONS. WE NOTE ARTICLE 34, PARA 4 OF THIS CONVENTION DEALS WITH CONSULAR ACCESS IN TERMS OF THE RIGHT "TO IMMEDIATELY VISIT" AND TO EXERCISE THIS RIGHT "ON A CONTINUING BASIS", AND THAT PARA 5 OF THE SAME ARTICLE PROVIDES THE RECEIVING STATE'S LAWS AND REGULATIONS MAY NOT "ANNUL THESE RIGHTS".
MOYNIHAN

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